**FARAD CONTINUATION SHEET NO.**

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# NAGPUR BENCH AT NAGPUR
# Second Appeal No. 549/2004

**Wasudeo s/o Hadu Satimeshram & 3 others**
**..V/s..**
**Dashrath s/o Budha Satimeshram**

| Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders. | Court's or Judge's Orders |
|---|---|

**CORAM**:- **Smt. Vasanti A. Naik, J.**
**DATE:- 18th June, 2007.**

Heard Mr. Kotwal, Advocate for the appellants and Mr. Gupta, Advocate for the respondent.

The appellants are the original defendants. A suit was filed by the plaintiff for declaration that the plaintiff is the owner of the suit property and the defendants be directed to hand over the peaceful possession of the suit property to the plaintiff. It was the case of the plaintiff that the plaintiff had purchased the suit property from its owner Smt. Jamnabai by registered sale deed dated 15.03.1994. The property was mutated in the name of the plaintiff and the plaintiff was put in possession thereof. The defendants resisted the claim of

the plaintiff and denied the execution of the sale deed by Smt. Jamnabai. According to the defendants, Jamnabai had executed a gift deed in favour of defendant No. 3 and in view of the gift deed the defendants had become the owner of the property. Since, the gift deed was executed on 14.12.1992, Smt. Jamnabai could not have sold the suit property to the plaintiff on 15.03.1994 when the property was already gifted to defendant No. 3. The plaintiff examined himself and also examined the attesting witness to the sale deed. The trial Court, however, dismissed the suit of the plaintiff on the ground that the plaintiff had failed to prove his ownership over the suit property. The Court held that the suit was also bad for non-joinder of necessary party i.e. Smt. Jamnabai, to the suit. The trial Court heavily relied on the evidence of Smt. Jamnabai, who had deposed that she had not executed the sale deed in favour of the plaintiff.

In an appeal preferred by the plaintiff, the appellate Court reversed the findings recorded by the trial Court and

held that the plaintiff had duly proved that he purchased the suit property by sale deed dated 15.03.1994. The appellate Court considered the evidence of the plaintiff's attesting witness as also the other documentary evidence to show that the plaintiff had title to the suit property. The appellate Court held that the original sale deed had been sent to Pune and the plaintiff had filed certified copy of the sale deed on record. The defendants had endorsed that he had no objection to the filing of the certified copy of the sale deed by the plaintiff on record. The document was, therefore, exhibited by the trial Court. Relying on the aforesaid document and also the admissions of Smt. Jamnabai in her cross-examination that the plaintiff had taken her to the Registrar's Office and obtained her signature on the sale deed, the appellate Court held that the plaintiff had proved his ownership over the suit property and was entitled to the possession of the same. Both the Courts rightly discarded the gift deed, which was produced by the defendants on record, as according to the Courts the unregistered gift deed was not admissible in the evidence and

could not have transferred the property in favour of the defendant No. 3. The appellate Court further reversed the findings recorded by the trial Court, and rightly so, on the question of non-joinder of Smt. Jamnabai as party defendant to the suit. The appellate Court observed that Smt. Jamnabai was the vendor of the property and in a suit for possession based on title, it was not necessary to join the vendor as party-defendant, when no relief was claimed against the vendor.

The findings recorded by the appellate Court are pure findings of fact based on the proper appreciation of the material evidence on record. The findings do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to the costs.

The learned counsel for the appellants, at this juncture, makes a request that the appellants may be permitted to stay in the premises for a period of two months from today as the rainy season is ensuing and it would not be possible for the appellants to seek alternate accommodation immediately.

Mr. Gupta, the learned counsel for the respondent has no objection for the grant of the aforesaid prayer. In view of the aforesaid position, the appellants should vacate the premises at the expiry of two months' period from the date of this order.

**JUDGE**

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